



Missouri  
Department of  
Natural Resources

## **SPECIFICATION REVIEW GUIDANCE CHECKLIST**

### **Small Borrower Loan Projects**

Project Name \_\_\_\_\_

Project No. \_\_\_\_\_

Reviewer \_\_\_\_\_

Date \_\_\_\_\_

- \_\_\_\_\_ (A) Advertising Time
- \_\_\_\_\_ (B) State Wage Determinations (state)
- \_\_\_\_\_ (C) Nondiscrimination Statement
- \_\_\_\_\_ (D) Periods of Excessive Unemployment
- \_\_\_\_\_ (E) Award of Contract
- \_\_\_\_\_ (F) "or Equal" Statement
- \_\_\_\_\_ (G) Definite Completion Time
- \_\_\_\_\_ (H) Right of Entry – 10 CSR 20-4.023(18)(I)
- \_\_\_\_\_ (I) Privity of Contract
- \_\_\_\_\_ (J) Protest Provisions
- \_\_\_\_\_ (K) 5% Bid Bond
- \_\_\_\_\_ (L) 100% Performance Bond + 100% Payment Bond
- \_\_\_\_\_ (M) Payment Provisions
- \_\_\_\_\_ (N) Late Payment Clause
- \_\_\_\_\_ (O) Historical and Archaeological
- \_\_\_\_\_ (P) Surety Company Clause – Title 31 U.S.C. sec. 9304-9308
- \_\_\_\_\_ (Q) Sales Tax Exemption - MO State Sales Tax Law Sec. 144.062, RSMo.
- \_\_\_\_\_ (R) Missouri Products - 71.140 RSMo.
- \_\_\_\_\_ (S) Missouri Firms - Sec. 34.076 RSMo.
- \_\_\_\_\_ (T) Optional Bid Comment
- \_\_\_\_\_ (U) Missouri Executive Order No. 98-21 (MBE/WBE)
- \_\_\_\_\_ (V) OSHA

\_\_\_\_\_ (W) Employment of Unauthorized Aliens Prohibited – Sec 285.530 RSMo.

\_\_\_\_\_ (X) Domestic Products Procurement Law - Sec. 34.350 – 34.359 RSMo.

- A. Advertising Time - Projects be publicly advertised in an area newspaper and/or contractors' publication, allowing sufficient time for bids to be prepared and submitted. Projects shall be bid at least 30 days prior to bid opening.
- B. Missouri Wage Determination - Missouri Law require the inclusion of state wage determinations in your specification. The Division of Labor Standards always is available to answer questions and provide assistance with a prevailing wage project. State wage determinations may be obtained by contacting the Missouri Department of Labor and Industrial Relations, Division of Labor Standards, Prevailing Wage Section, 421 East Dunklin Street, P.O. Box 449, Jefferson City, Missouri 65102. Telephone (573) 751-3403.
- C. Nondiscrimination Statement - The proposal must contain a nondiscrimination statement.
- D. Periods of Excessive Unemployment – Only Missouri laborers and laborers from nonrestrictive states are allowed by law to be employed on Missouri's public works projects when the unemployment rate exceeds 5% for two consecutive months. (See Sections 290.550 through 290.580 RSMO). For questions call (573) 751-3403 Extension 0.
- E. Award of Contract - The proposal must fully explain the basis for determining the low bidder and include a statement that the contract will be awarded to the lowest responsive, responsible bidder.
- F. "Or Equal" Statement - The specifications must state that when manufacturers' names are used they are used to establish a standard and the words "or equal", if not stated, are implied.
- G. Completion Time - The bidding documents to include a provision for the maximum calendar or work days allowed for completion of the project.
- H. Right of Entry – The right of entry to the project site and access to records, be provided for the Missouri Department of Natural Resources, so they may have access to the work wherever it is in preparation or progress. Proper facilities must be provided for access and inspections.
- I. Privity of Contract - The specifications must contain a paragraph stating that neither the Missouri Department of Natural Resources, its divisions nor its employees are or will be a party to the contract(s) at any tier.
- J. Protest Provisions – The applicant must have protest provisions adopted prior to advertising this project for bids. The provisions should contain filing and protest resolution procedures. The Missouri Department of Natural Resources will not be involved in protest(s) and their resolution.
- K. Bid Bond - Each bidder to furnish a bid guarantee equivalent of 5% of the bid.
- L. One Hundred Percent Performance and Payment Bonds - The contractor shall furnish a performance and payment bond each in an amount equal to 100% of the contract price as security for the faithful performance of his/her contract and for payment of all labor and materials in connection with the project as set forth in the standard form of performance/payment bond included in the contract documents.

M. Payment Provisions - Prompt progress payments should be made by the Recipient to contractors. Adequate provisions for such payments should be included in the specifications in accordance with section 34.057 RSMo.

N. Late Payment Clause - The following *paragraph* must be included in the specifications:

*If the OWNER fails to make payment thirty (30) days after receipt of the CONTRACTORS application for payment, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest in accordance with section 34.057 RSMo.*

O. Historical and Archaeological – Inclusion in the specifications of a paragraph approximately as follows is required by P.L. 93-291.

If during the course of construction evidence of deposits of historical or archaeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner who shall notify the Missouri Department of Natural Resources and the Director, Division of Parks and Historic Preservation, P.O. Box 176, 205 Jefferson Street, Jefferson City, Missouri 65102, Telephone (573) 751-2479. No further disturbances of the deposits shall ensue until the contractor has been notified by the owner that he may proceed. The owner will issue a notice to proceed only after the state official has surveyed the find and made a determination to the Missouri Department of Natural Resources and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the specifications.

P. Surety Statement – In accordance with Title 31 U.S.C. Sec. 9304-9308, the following statement must be included on all bond forms.

IMPORTANT – Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Missouri.

Q. Missouri Sales Tax Exemption - While not required, we would encourage the incorporation of the following sales tax exemption paragraph in lieu of the one proposed in your specifications:

*Missouri State Statutes 144.062, effective August 28, 1994, allows for a sales tax exemption to contractors constructing, repairing or remodeling facilities or purchasing personal property and materials to be incorporated into and consumed in the construction of projects for a tax exempt entity. The tax exempt entity shall furnish a signed exemption certification authorizing such purchases for the construction, repair or remodeling project to each contractor and/or subcontractor.*

R. Missouri Products - In accordance with Chapter 71.140, RSMo, preference shall be given to Missouri products.

S. Missouri Firms - Pursuant to Section 34.076 RSMo, a preference shall be given to those persons doing business as Missouri firms, corporations, or individuals, or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less. In addition, in order for a nondomiciliary Missouri bidder to be successful, his bid must be that same percentage lower than a domiciliary Missouri bidder's bid, as would be required for a Missouri bidder to successfully bid in the nondomiciliary's state.

T. Optional Bid Comment – The current bidding climate is resulting in very high construction bids. It may be advisable to include the option to deduct certain portions of the project, or bid alternates, in the event the total bid exceeds the recipient's total funds.

Good construction estimates are essential. Even low bids can result in tying up the city's bonding capacity since excess funds can only be used to make annual principal payments on the bonds used for the project.

If the final engineer's estimate made prior to loan closing is more than the loan ceiling as provided in the Intended Use Plan (IUP), the recipient may request that program staff or the Clean Water Commission increase the amount on the IUP, up to the limits of the recipient's bonding capacity.

- U. Missouri Executive Order No. 98-21 - In accordance with Missouri Executive Order No. 98-21, all contractors shall make special efforts to assure that a Fair Share Objective of 10% be made available to minority business firms, including historically black colleges and universities, and 5% be made available to women business enterprise firms, when purchasing supplies, equipment, construction and services related to this project. These six affirmative steps should be included in the specifications for clarity. A copy of the steps is enclosed for your information.

The following document must be included in the specifications; the Minority and Women's Business Enterprise Utilization Worksheet. All bidders should submit a completed Worksheet or similar format as part of their proposals prior to award of the contract. The apparent low bidder should be required to identify the disadvantaged firms which will receive subcontracts, and for each firm, a listing of the type of enterprise and the contract amount using this Worksheet. If the established goals are not met, the bidder should also be required to submit documentation which demonstrates that the six affirmative steps were taken. The bidder would be considered unresponsive without such documentation.

#### **Six Affirmative Steps**

*The Recipient agrees to take all necessary affirmative steps required to assure that small and minority firms, women's business enterprises and labor surplus area firms are used when possible as sources when procuring supplies, equipment, construction and services related to the subgrant. The recipient agrees to include information about these requirements in solicitation documents. Affirmative steps shall include:*

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;*
- b. Ensuring that small and minority and women's business enterprises are solicited whenever they are potential sources;*
- c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority and women's business enterprises;*
- d. Establishing delivery schedules, where the requirements of work will permit participation by small and minority and women's business enterprises;*
- e. Using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, and;*
- f. Requiring any prime contractor or other subgrantee, if subgrants are to be allowed, to take the affirmative steps in subparagraphs a. through e. of this section.*

- V. Occupational Safety and Health Administration (OSHA) Training - The contract documents must contain a statement regarding compliance with section 292.675 RSMo. Any person signing a contract to work on the construction of public works for any public body shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work on such construction project.
- W. Employment of Unauthorized Aliens Prohibited - The contract documents must contain a statement regarding compliance with section 285.530 RSMo. and an affidavit for signature regarding employment of unauthorized aliens prohibited along with the supporting enrollment documentation in a federal work authorization program.

*"Pursuant to §285.530.1, RSMo, the contractor assures that it, as well as its subcontractors do not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri, and shall affirm, by sworn affidavit and provision of documentation, its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Further, the contractor assures that it, as well as its subcontractor shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.*

*In accordance with sections 285.525 to 285.550, RSMo a general contractor or subcontractor of any tier shall not be liable when such contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of section 285.530, RSMo if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 1 of section 285.530, RSMo and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States."*

- X. Domestic Products Procurement Law – In accordance with sections 34.350 - 34.359, RSMo, the bid documents shall contain the following statement:

*"All manufactured goods or commodities used or supplied in the performance of any contract or subcontract awarded on this project shall be manufactured, assembled or produced in the United States, unless obtaining American-made products would increase the cost of the contract by more than ten percent (10%). In accordance with sections 34.350 through 34.359 RSMo a waiver may be requested from the owner."*

The enclosed Domestic Products Procurement Law – RSMo 34.350 – 34.359 Certification, must be included in the specifications and submitted with the bid proposal.